

- (ii) located on property owned by the person; or
- (2) to dispose of a motor vehicle to a motor vehicle demolisher for demolition, wrecking, or dismantling if:
  - (A) the abandoned motor vehicle:
    - (i) is in the possession of the person;
    - (ii) is more than eight years old;
    - (iii) *either has no motor or is otherwise totally inoperable or does not comply with all applicable air pollution emissions control related requirements included in: (aa) the vehicle inspection requirements under Chapter 548, as evidenced by a current inspection certificate affixed to the vehicle windshield; or (bb) the vehicle emissions inspection and maintenance requirements contained in the Public Safety Commission's motor vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, or the state's air quality state implementation plan; and*
    - (iv) was authorized to be towed by a law enforcement agency; and
  - (B) the law enforcement agency approves the application.

SECTION 2. Subsection (b), Section 683.054, Transportation Code, is amended to read as follows:

- (b) Without giving the notice required by Section 683.053, the department may issue to an applicant under Section 683.051(2) a certificate of authority to dispose of the motor vehicle to a demolisher if the vehicle *meets the requirements of Sections 683.051(2)(A)(ii) and (iii);*
  - ~~[(1) is more than eight years old; and~~
  - ~~[(2) has no motor or is otherwise totally inoperable].~~

SECTION 3. This Act takes effect September 1, 1999.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 30, 1999: Yeas 30, Nays 0; passed the House on May 19, 1999, by a non-record vote.

Approved June 18, 1999.

Effective September 1, 1999.

## CHAPTER 613

### S.B. No. 846

#### AN ACT

relating to certain fees and penalties applicable to the regulation of barbers.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsection (b), Section 23, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

- (b) The fees to be paid to the Board by an applicant for an examination to determine *the applicant's* [his] fitness to receive a certificate of registration to practice barbering or to practice as a barber technician shall be *set by the Board in an amount not to exceed \$50* [\$10].

SECTION 2. Section 24, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. ~~VIOLATIONS [OFFENSES AND PENALTY]~~. Each of the following is a violation of this Act for which an administrative penalty may be imposed under Section 24A

~~of this Act: [offenses shall constitute a misdemeanor punishable upon conviction in a court of competent jurisdiction by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00).]~~

(A) The violation of any of the provisions of Sections 1, 2, or 3 of this Act;

(B) Permitting any person in one's employ, supervision, or control to practice as a barber or other licensee unless that person has a current certificate of registration or license issued by the board;

(C) Obtaining or attempting to obtain a certificate of registration or license by fraudulent representation;

(C-1) For anyone who owns, operates or manages a barber school or college to work a chair or to permit teachers, student teachers, or anyone other than an enrolled student to render barbering services to the public in their said establishment; and

(D) The willful failure to display a certificate of registration or license as required by Section 19 of this Act.

SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended by adding Sections 24A through 24M to read as follows:

*Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person for a violation under Section 24 of this Act.*

*Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.*

*(b) The amount of a penalty shall be based on:*

*(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;*

*(2) the economic harm to property or the public caused by the violation;*

*(3) the history of previous violations;*

*(4) the amount necessary to deter a future violation;*

*(5) efforts to correct the violation; and*

*(6) any other matter that justice may require.*

*Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE PENALTY. (a) If the executive director determines that a violation occurred, the executive director may issue to the board a report stating:*

*(1) the facts on which the determination is based; and*

*(2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.*

*(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person.*

*(c) The notice must:*

*(1) include a brief summary of the alleged violation;*

*(2) state the amount of the recommended penalty; and*

*(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.*

*Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:*

*(1) accept the determination and recommended administrative penalty of the executive director; or*

*(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.*

(b) *If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.*

**Sec. 24E. HEARING.** (a) *If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.*

(b) *The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of any proposed administrative penalty.*

**Sec. 24F. DECISION BY BOARD.** (a) *Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:*

- (1) *find that a violation occurred and impose an administrative penalty; or*
- (2) *find that a violation did not occur.*

(b) *The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.*

**Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** *Not later than the 30th day after the date the board's order becomes final, the person shall:*

- (1) *pay the administrative penalty; or*
- (2) *file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.*

**Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY.** (a) *Within the 30-day period prescribed by Section 24G of this Act, a person who files a petition for judicial review may:*

- (1) *stay enforcement of the administrative penalty by:*
  - (A) *paying the penalty to the court for placement in an escrow account; or*
  - (B) *giving the court a supersedeas bond approved by the court that:*
    - (i) *is for the amount of the penalty; and*
    - (ii) *is effective until all judicial review of the board's order is final; or*
- (2) *request the court to stay enforcement of the penalty by:*
  - (A) *filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and*
  - (B) *giving a copy of the affidavit to the executive director by certified mail.*

(b) *If the executive director receives a copy of an affidavit under Subsection (a)(2) of this section, the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.*

**Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY.** (a) *If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.*

(b) *The attorney general may sue to collect the penalty.*

**Sec. 24J. DECISION BY COURT.** (a) *If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.*

(b) *If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.*

**Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST.** (a) *If the person paid the administrative penalty and if the amount of the penalty is reduced or*

*the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.*

*(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.*

*(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.*

**Sec. 24L. RELEASE OF BOND.** *(a) If the person gave a supersedeas bond and the administrative penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.*

*(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.*

**Sec. 24M. ADMINISTRATIVE PROCEDURE.** *A proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.*

**SECTION 4.** (a) This Act takes effect September 1, 1999.

(b) The change in law made by this Act to Subsection (b), Section 23, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), applies only to an application for an examination filed on or after that date. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act applies only to a violation under Section 24, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), as amended by this Act, that occurs on or after the effective date of this Act. A violation of that section that occurs before the effective date of this Act is governed by the law in effect on the day the violation occurred, and the former law is continued in effect for that purpose.

(d) For purposes of Subsection (c) of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

**SECTION 5.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 8, 1999: Yeas 30, Nays 0; passed the House on May 22, 1999, by a non-record vote.

Approved June 18, 1999.

Effective September 1, 1999.

## CHAPTER 614

S.B. No. 851

### AN ACT

relating to an application for issuance of a subpoena.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.011 to read as follows:

**Sec. 30.011. ELECTRONIC SUBPOENA APPLICATION.** *In addition to any other procedures permitted under state law or by court rule, an application for issuance of a subpoena may be made by electronic means.*

**SECTION 2.** Subsection (a), Article 24.03, Code of Criminal Procedure, is amended to read as follows: